IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.838 OF 2002
WITH
CIVIL APPLICATION NO.1074 OF 2002

Shri Laxman Abaji Bhosale.
Age: 54 yrs.Occ.Agriculturist & Service,
R/o Mardi, Tal. Man,
Dist.Satara. ..Appellant.

V/s.

Shri Tukaram Maruti Pol
Age: 59 yrs.,Occ.Agriculturist,
R/o Mardi, Tal.Man,
Dist.Satara. ..Respondent.

Ms.V.S.Mhaispurkar for appellant.

Mr.Anil V. Anturkar for Respondent.

CORAM: A.M.KHANWILKAR,J

DATE : JANUARY 12, 2007.

P.C. :

1. This appeal from Order takes exception to the Judgment and Order passed by the Additional District Judge, Satara dated 18th March, 2002 in R.C.Appeal No.132 of 1996, whereby the Judgment and decree passed by the C.J.J.D.Dahiwadi dated 28th February, 1996, in R.C.Suit No.141 of 2003, came to be set aside and instead, the matter was sent back to the trial Court to frame and decide issue under the Bombay Prevention of Fragmentation and Consolidation Act, 1947.

2. The grievance of the appellant before this Court is that the order of remand in the fact situation of the present case, was unwarranted. This is so because, in paragraph-5 of the written statement, only vague statement is made that the sale deeds in question were invalid in view of the provisions of Bombay Prevention of Fragmentation and Consolidation and Holdings Act 1947. Besides, no issue was framed by the trial Court in that behalf nor the respondent ever insisted for framing of the said issue before the trial Court.

3. According to the respondent, however, the respondent had moved the appellate Court by way of a formal application for amendment of the pleadings so as to provide for the material facts to agitate the said issue, for which reason, the said contention raised on behalf of the appellant became triable issue. Mr. Anturkar contends that even if it were to be a suit simplicitor for injunction, the issue referrable to the provisions of the said Act of 1947 will have to be decided in the first place by the authority under the said Act, only whereafter the suit can proceed further. To support this submission, reliance is placed on the decision of our

High Court in the case of **Bhagwanrao Jijaba Auti V/s. Ganpatrao Mugaji Raut & Anr.(1987(3) Bom. C.R.258).** It is for that reason, contends learned Counsel, the appellate Court showed indulgence to the respondent and remanded the matter for fresh consideration on the said aspect.

4. The appellant would however, contend that the proposed amended pleading of the respondent also do not make out necessary material facts, so as to make out a triable issue referable to the said Act of 1947. According to the appellant, the sale deeds can be said to be invalid, only if, the respondents were to assert the grounds to challenge the same as are available in terms of the provisions of the Bombay Prevention of Fragmentation & Consolidation of Holding Act. It is urged that there are only two grounds for such challenge, either covered by section 7 or by section 31 of the said Act. No material facts have been spelt out in the proposed amended pleadings, so as to attract any of those situations. Mr. Mhaispurkar has relied on the decision of our High Court reported in **AIR 1981 Bombay 9 in the case of Putalabai Lakhu Pawar & Ors V/s. Shiva Dhondi Pawar & Ors.** to buttress the above submission. If it is so, there was no tangible material before the

Appellate Court to relegate the parties to the trial Court for framing of the issue with reference to the provisions of Fragmentation and Consolidation Act and to require the parties to go to the trial in that behalf.

5. Mr.Anturkar, counsel for the respondent in his usual fairness accepts that the proposed amended pleadings in no way spell out the grounds to challenge the suit documents in the context of either section 7 or section 31 of the Act of 1947, although it provides for various other details. Those details, even if accepted as it is, cannot make out the ground postiluted under section 7 or section 31 of the Fragmentation and Consolidation Act. Having realised this position, Mr. Anturkar for the respondent would submit that the Court may not record detailed reasons for setting aside the impugned Judgment, as any observation of this Court would affect the rights and contention of the parties in the proceedings, which nevertheless will have to be adjudicated by the appellate Court on its own merits. Besides, the respondent be granted liberty to file further application including for amendment of pleadings, as may be advised, which will be decided on its own merits by the lower Court in accordance

with the law.

6. Counsel for the appellant has no objection for not recording detailed reasons for setting aside the order, which is impugned in this appeal.

7. Accordingly, this appeal is allowed and the impugned Judgment and Order is set aside. The appeal filed by the respondent before the lower Appellate Court, instead, is restored to the file of the concerned District Judge, Satara, to be decided on its own merits in accordance with the law. All questions on merits are left open, to be agitated by the parties and considered by the appellate Court in accordance with the law. The parties shall appear before the first Appellate Court on 20th February, 2007. The Appellate may proceed with the appeal to be disposed off expeditiously preferably within six months therefrom.

8. It is once again clarified that it will be open to the respondent to file application for further amendment of the pleadings, if so advised, before the appellate Court, where the appeal is restored to the file. The appellate Court may consider the same on its own merits in accordance

with the law.

9. In view of this order, nothing survives in the civil application. Hence, disposed of accordingly.